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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 ROBERT KENNY,

10 Plaintiff,

11 v.
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13 PACIFIC INVESTMENT MANAGEMENT
14 COMPANY LLC, a Delaware limited liability
company; PIMCO INVESTMENTS LLC,

15 Defendants.

Case No. C14-1987 RSM

ORDER ON ORDER TO SHOW CAUSE
AND REQUEST TO WITHDRAW
RECORDS

16 On July 6, 2018, the Court issued a ruling on all previous Motions to Seal, ordering
17 Plaintiff to “file new unsealed or redacted versions of the documents as stated above” and
18 ordering the parties to “file new redacted versions of their briefing as stated above.” Dkt. #238.
19 The deadline to comply with that Order was July 27, 2018, later extended to August 3, and then
20 August 10. *See* Dkts. # 238, #240, and #242.
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22 On August 8, 2018, the parties filed a stipulation of dismissal with prejudice. Dkt. #243.
23 The stipulation also stated the parties’ intent to withdraw their pending cross-motions for
24 summary judgment, Dkts. #154 and #162, and all supporting materials. The parties stated,
25 “[f]or the avoidance of doubt, pursuant to LCR 5(g)(6), in light of their withdrawal, the parties
26 request that material currently filed under seal remain sealed.” *Id.* at 2.
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1 The Court ruled that LCR 5(g)(6) was inapplicable to the current situation and that the
2 Court believed the parties' request was contrary to the "strong presumption of public access to
3 the court's files." Dkt. #238 (citing LCR 5(g)). The parties were ordered to show cause why
4 withdrawal of the documents from the record should be permitted. *Id.*

5 In their responsive brief, Defendants contend that "the public has minimal interest in
6 access to materials that will not form the basis of any court decision," and that "PIMCO has
7 demonstrated valid confidentiality interests." Dkt. #245 at 2. Defendants cite to a Northern
8 District of California case for the proposition that "the public's interest in accessing the
9 documents at issue in a motion on which the Court did not rule on the merits is low" because
10 "public access to the records cited in [a moot] motion will not further the public's
11 understanding of the reasoning underlying the Court's decisions." *Id.* (citing *CreAgri, Inc. v.*
12 *PinnacLife Inc.*, No. 5:11-CV-06635-LHK, 2014 WL 27028, at *1 (N.D. Cal. Jan. 2, 2014),
13 *aff'd*, 579 F. App'x 1003 (Fed. Cir. 2014)). Defendants argue that "the public's interest in
14 access to the documents is weak" when a court "consider[s] the documents only to determine
15 whether to seal them." *Id.* at 2–3 (citing *Riker v. Fed. Bureau of Prisons*, 315 F. App'x 752,
16 755 (10th Cir. 2009)). According to Defendants, the Court need not follow the "compelling
17 reasons" standard in determining whether to unseal these documents "[n]ow that this litigation
18 has been resolved and the motions rendered moot." *Id.* at 3. Defendants proceed with the good
19 cause standard for the materials at issue, arguing, *inter alia*, that they "are the same types of
20 materials that the Court previously found appropriate for sealing under the 'good cause'
21 standard in connection with the parties' discovery disputes." *Id.* at 4 (citing Dkt. #82).

22 Plaintiff states that he "believes that the request to permanently seal the materials is
23 appropriate given the change in the posture of this case." Dkt. #246 at 2. Plaintiff asserts that
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1 “the parties’ resolution of this case was in no way conditioned on the sealing of these
2 documents...” *Id.* Plaintiff essentially makes no further argument.

3 Plaintiff’s change in tone is surprising. Two months ago, before settlement, Plaintiff
4 filed a 22-page brief vigorously arguing in support of public access to Court filings and the
5 particular reasons why these documents should be made public. *See* Dkt. #236. The Court
6 believes Plaintiff’s capitulation on this issue *did* play a role in the settlement, even if settlement
7 was not “conditioned” on the sealing of documents.
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9 An empty stipulation by the parties is typically insufficient to get the Court to agree to
10 seal records. Now the parties have provided substantive arguments in what has essentially
11 become a motion for reconsideration. Plaintiff acknowledges this in a footnote: “[t]o the
12 degree the Court views the parties’ Stipulation of Dismissal as a request to reconsider the
13 Court’s order on the Motion to Seal, Plaintiff believes that the parties’ resolution of this case
14 and the withdrawal of the motions for summary judgment present ‘new facts . . . which could
15 not have been brought to the Court’s attention earlier with reasonable diligence.’” Dkt. #246 at
16 2 n.1 (citing Local Rule 7(h)(1)).
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19 The parties should have made these arguments earlier. The Court does not condone
20 negotiating to seal documents the Court has already ruled to unseal. Nevertheless, the Court
21 reluctantly agrees that the public’s interest in the documents has significantly decreased with
22 the Court no longer ruling on the corresponding Motions for Summary Judgment. These
23 documents will not form the basis for a substantive Court decision. Furthermore, Defendants
24 have successfully demonstrated good cause to seal these documents in their responsive brief.
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26 Given all of the above, the Court hereby finds and ORDERS that the parties’ cross-
27 motions for summary judgment and all briefing, declarations, exhibits, and supporting materials
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1 offered in support thereof shall remain sealed and shall not be unsealed unless by further order
2 of this Court. The parties need not file new versions of the documents as previously ordered by
3 the Court at Dkt. #238.

4 DATED this 10 day of September 2018.

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7 RICARDO S. MARTINEZ
8 CHIEF UNITED STATES DISTRICT JUDGE
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